

Program Reviews, Sanctions, & Closeout



In this chapter we discuss program reviews conducted at schools, sanctions and corrective actions, and procedures for schools that are ending their participation in one or more of the FSA programs.

PROGRAM REVIEWS BY THE DEPARTMENT

The Department of Education oversees the FSA programs to ensure they are administered properly. One way we do this is by conducting program reviews to confirm that schools meet FSA requirements for institutional eligibility, financial responsibility, and administrative capability. Program reviews identify compliance problems and suggest corrective actions.

If a school is cited in a program review for improperly disbursing FSA program funds, it must restore them as appropriate. If a school is cited for other serious program violations, it may be subject to correction and sanctions such as fines, emergency action, limitation, suspension, or termination, as discussed later in this chapter.

A program review covers many of the same areas as an audit (see *Chapter 4*), including fiscal operations and accounting procedures as well as compliance with the specific program requirements for student eligibility and awards. However, program reviews are not conducted annually at every school; priority is given to schools that meet criteria specified in the law (see the sidebar note on the next page).

Department program reviewers will

- analyze school records and identify weaknesses in the school's procedures for administering FSA funds;
- determine how those weaknesses may subject FSA funds to potential or actual fraud, waste, and abuse;
- identify corrective actions that will strengthen the school's future compliance with FSA rules and regulations;
- quantify the harm from any failings of the school and identify liabilities where noncompliance has led to loss, misuse, or unnecessary spending of federal funds; and
- when necessary, refer schools for administrative action to protect the interests of students and taxpayers.

Related information

- Audit requirements—*Chapter 4*
- Updating the E-App for changes to programs and locations—*Chapter 5*

FSA assessments

To assess your school's compliance with the provisions of this chapter, see the FSA Assessment module for "Institutional Eligibility" (www.ifap.ed.gov/qahome/qaassessments/institutionalelig.html).

Program review priority

The law specifies that the Department gives priority in program reviews to schools that

- have a high cohort default rate or dollar volume of default,
- have a significant fluctuation in Pell Grant awards or FSA loan volume that is not accounted for by changes in the programs,
- are reported to have deficiencies or financial aid problems by the appropriate state agency or accrediting agency,
- have high annual dropout rates, or
- the Department determines may pose a significant risk of failing to comply with the administrative capability or financial responsibility requirements.

20 USC 1099c-1(a)(2)

Scope of the review

A program review may be either a general assessment review, a focused review, or a compliance assurance review. A general assessment review is the most common type of review and is normally conducted to evaluate the school's overall performance in meeting FSA administrative and financial requirements. A focused review is normally conducted to determine if the school has problems with specific areas of FSA program compliance. A compliance assurance review is a tool that is used to help validate the Department's risk assessment system.

For general assessment, compliance assurance, and some focused reviews, the review team will randomly select student files. In general, a sample consists of 15 students from each award year under review. The review team will analyze the academic file, student account ledger, student financial aid file, and admissions file for each student in the sample.

Reviewers will also examine school records that are not specific to individual students. These records include required policies and procedures, fiscal records, and consumer information (i.e., the school's website, school catalog[s], pamphlets, etc.).

It may be necessary for the reviewer to conduct interviews with school officials, including academic or education personnel or the registrar, admissions personnel, financial aid personnel, fiscal office personnel, placement officer, and/or campus security personnel. In addition, the reviewer may interview students.

Location of the review

Program reviews are typically conducted at the institution. However, in some circumstances institutions are asked to submit copies of selected records to the Department for review at its offices, and interviews are conducted via telephone rather than in person.

Notification of the review

Most reviews are announced up to 30 days prior to the review by a telephone call to the president and financial aid administrator. The school also receives written notice of the review and is asked to provide relevant materials prior to the start of the review (e.g., policies and procedures, consumer publications, a list of FSA recipients, etc.). The school will also be expected to make other records available on-site at the start of the review. In some cases, notice for the review is given the day before the review (via overnight delivery or fax), the morning of the review (via fax), or at the time the review team arrives at the school.

Schools are required to cooperate with the Department in the event of a program review and provide unrestricted access to any and all information requested to conduct the review. Failure to provide this access to the program review team may lead to an adverse administrative action.

School Participation Divisions

The School Participation Divisions conduct program reviews and review compliance audits, financial statements, and initial eligibility and recertification applications to get a picture of a school's overall compliance. FSA's School Eligibility Service Group (SESG) coordinates the School Participation Divisions, which are staffed by personnel in the regions and in Washington, DC. Each division is assigned a portfolio of schools and is responsible for the oversight functions mentioned above for those schools.

The entire division will evaluate information on the school from a variety of sources to identify any compliance issues at the school. The division can then assess potential risk to the FSA programs and determine appropriate action. Once appropriate actions are decided upon, the person assigned to the school ensures that the recommended actions are taken.

School Participation Divisions will collect and review information on a school from many sources, including but not limited to:

- applications for recertification,
- financial and compliance audits,
- state agencies,
- accrediting agencies and licensing boards,
- student complaints, and
- Department databases.

A School Participation Division may decide to take actions that include but are not limited to:

- renewing full recertification or awarding only provisional certification;
- initiating a program review;
- establishing liabilities;
- developing a strategy for providing technical assistance,
- transferring the school to the cash monitoring or reimbursement payment method (see *Volume 4: Processing Aid and Managing FSA Funds*);
- requiring a letter of credit; and
- referring the school for an enforcement action.

Actions do not always have to be negative. For example, the School Participation Division can recommend a school for participation in the Experimental Sites Program.

Such oversight provides the additional benefit of permitting a school to contact one team that will have all information on the school available in one place. For a list of phone numbers for the regional School Participation Divisions, go to the IFAP website (<http://ifap.ed.gov>) and click on Help > Contact Information > Federal Student Aid Offices.

Department obligations

For its part in program reviews, the Department is required to

- establish guidelines designed to ensure uniformity of practice in the conduct of program reviews;
- make copies of all review guidelines and procedures available to all participating schools;
- permit schools to correct administrative, accounting, or record keeping errors if the errors are not part of a pattern and there is no evidence of fraud or misconduct;
- base any civil penalty assessed against a school resulting from a program review or audit on the gravity of the violation, failure, or misrepresentation;
- inform the appropriate state and accrediting agency whenever it takes action against a school;
- provide schools an adequate opportunity to review and respond to any program review report and related materials before a final report is issued; and

Administrative subpoena authority

HEA Sec. 490A

The Department has the authority to issue administrative subpoenas to assist in conducting investigations of possible violations of the provisions of FSA programs. In addition, the law authorizes the Department to request the Attorney General to invoke the assistance of any court of the United States for purposes of enforcing a subpoena if necessary.

Communication with state agencies

The HEA requires that each state, through at least one state agency, must

- furnish the Department, upon request, with information regarding licensing and other authorization for a school to operate in that state;
- promptly notify the Department of revocations of licensure or authorization; and
- promptly notify the Department of credible evidence that a school has committed fraud in the administration of the FSA programs or has substantially violated a provision of the HEA.

Department's recognition of state agencies
Sec. 495 of the HEA
20 USC 1087–1(b)
34 CFR 603

Access to records

Access includes the right to copy records (including computer records), to examine computer programs and data, and to interview employees without the presence of management or the presence of the school's or a servicer's tape recorder.

Access and examination cite
34 CFR 668.24(f)

Appealing audit and program review determinations

The law allows for appeals of final audit or program review determinations. Note that only a final determination may be appealed. The letter conveying a final audit determination is clearly identified as a Final Audit Determination Letter and explains the appeals procedures. For a program review, the final determination letter is identified as a Final Program Review Determination Letter.

34 CFR Part 668 Subpart H

School Participation Division contacts

You can locate the School Participation Division for your region by going to the "Help" menu on the IFAP website and choosing Contact Information > Federal Student Aid Offices.

- consider a school's response in any final program review report or audit determination and include in that (1) a written statement addressing the school's response, (2) a written statement of the basis for the report or determination; and (3) a copy of the school's response. [20 USC 1099c-1(b)]

Entrance and exit/status conference

The review team will hold an entrance conference with school officials at the beginning of the review. The purpose of the entrance conference is to provide school officials with information about the review and the program review process and for reviewers to learn how federal student aid is processed at the school.

The review team will hold an exit or status conference at the end of a program review. The purpose of the exit conference is to inform school officials about the next steps in the process, summarize preliminary findings, advise school officials of any immediate changes that must be made, and/or provide details of any remaining outstanding items. If the fieldwork is not complete or the data has not been fully analyzed, a status meeting is conducted. A return visit may be necessary or an exit conference may be conducted via telephone after further analysis is completed.

Written report

The program review team prepares a preliminary written report after completion of the review. In most instances, this report will be sent to the school within 75 days of the review. The school may respond to this report if it wishes to offer additional information to support its position or if it disagrees with any of the report's findings. When the Department has fully considered the school's response and any additional documentation provided by the school, the Department will send a Final Program Review Determination (FPRD) letter to the school.

Final Program Review Determination (FPRD)

An FPRD is a report that includes each finding identified in the program review report, the school's response, and the Department's final determination. The FPRD may require the school to take further action to resolve one or more of the findings. This action may include making student level adjustments in COD and the G5 payment system, and paying liabilities to the Department, student, or lenders on behalf of the student.

Any funds the school owes as a result of the FPRD must be repaid within 45 days of the school's receipt of the FPRD unless the school submits an appeal to the Department or enters into a payment plan with ED's Financial Management Group. The cover letter of the FPRD provides instructions on how to file an appeal. If payment or an appeal is not received within 45 days, the Department may elect to use administrative offset to collect the funds owed.

Accrediting agency role

The goal of accreditation is to ensure that the education provided by postsecondary educational institutions meets an acceptable level of quality. The Department recognizes agencies that meet established criteria, and such recognition is a sign that an agency has been determined to be a reliable authority on the quality of the institutions or programs the agency accredits.

An accrediting agency can be recognized by the Department for institutional or programmatic accreditation. An institutional accreditation agency accredits an entire institution. A programmatic accrediting agency accredits specific educational programs, departments, or schools within an institution.

An agency must have standards that effectively address the quality of a school or program in the following areas:

- success with respect to student achievement in relation to mission, including, as appropriate, consideration of course completion, state licensing examination, and job placement rates;
- curricula;
- faculty;
- facilities, equipment, and supplies;
- fiscal and administrative capacity as appropriate to the specific scale of operations;
- student support services;
- recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising;
- measures of program length and the objectives of the degrees or credentials offered;
- record of student complaints received by, or available to, the agency;
- record of compliance with the school's FSA program responsibilities, based on items such as default rate data and the results of compliance audits and program reviews and any other information that the Department may provide to the agency; and
- any additional accreditation standards the accrediting agency deems appropriate.

There are many additional statutory requirements a national accrediting agency must meet to qualify for recognition. For example, an accreditation agency must:

- consistently apply and enforce standards for accreditation that ensure that the education or training offered by an institution or program, including any offered through correspondence or distance education, is of sufficient quality to achieve its stated objectives for the duration of the school's accreditation period;
- perform, at regularly established intervals, on-site inspections and reviews of institutions of higher education (that may include unannounced site visits), with particular focus on educational quality and program effectiveness;
- agree to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action; and
- if it is an institutional accrediting agency, maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after an agency has accredited or preaccredited the institution do not adversely affect the capacity of the institution to continue meeting the agency's standards.

Information and a complete list of agencies recognized by the Department can be found at (www.ed.gov/admins/finaid/accred/index.html).

Department's recognition of accrediting agencies

Sec. 496 of the HEA
20 USC 1099b
34 CFR 602

Regulations on corrective actions and sanctions

For details on steps that a school should follow in any of these situations, see Subpart G of the general provisions regulations and Section 600.41 of the institutional eligibility regulations.

Actions due to program violations or misrepresentation

If a school has violated the FSA program regulations, the Department may (at its sole discretion) allow the school to respond to the problem and indicate how it will correct it. However, if the school has repeatedly violated the law or regulations, or the Department has determined that the violations are egregious, the Department may take an emergency action, fine the school, or initiate a limitation, suspension, or termination of FSA program participation.

Criminal penalties

HEA Sec. 490

CORRECTIVE ACTIONS AND SANCTIONS

Sanctions

Sanctions include emergency actions, fines, limitations, suspensions, and terminations (see descriptions on next page). The Department may initiate actions against any school that:

- violates the law or regulations governing the FSA programs, its Program Participation Agreement, or any agreement made under the law or regulations; or
- substantially misrepresents the nature of its educational programs, its financial charges, or its graduates' employability. For details on misrepresentation, see *Chapter 6*.

In addition, the Department has the authority to terminate a school or program that no longer meets the eligibility criteria given in *Chapter 1*.

Similarly, the Department may also sanction a third-party servicer that performs functions related to the FSA programs. Further, the Department has the authority to sanction a group of schools or servicers if it finds that a person or entity with substantial control over all schools or servicers within the group has violated any of the FSA program requirements or has been suspended or debarred from program participation. See *Chapters 1 and 4*.

Criminal penalties

The law provides that any person who knowingly and willfully embezzles; misapplies; steals; obtains by fraud, false statement, or forgery; or fails to refund any funds, assets, or property provided or insured under Title IV of the Higher Education Act; or attempts to commit any of these crimes will be fined up to \$20,000 or imprisoned for up to five years, or both. If the amount of funds involved in the crime is \$200 or less, the penalties are fines up to \$5,000 or imprisonment up to one year, or both.

Any person who knowingly and willfully makes false statements, furnishes false information, or conceals material information in connection with the assignment of an FSA program loan or attempts to do so, will, upon conviction, be fined up to \$10,000 or imprisoned for up to one year, or both. This penalty also applies to any person who knowingly and willfully:

- makes, or attempts to make, an unlawful payment to an eligible lender of loans as an inducement to make, or to acquire by assignment, a loan insured under such part.
- destroys or conceals, or attempts to destroy or conceal, any record relating to the provision of FSA program assistance with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation under this part.

Corrective actions and sanctions

Emergency action

The Department may take an emergency action to withhold FSA program funds from a school or its students if the Department receives information, determined by a Department official to be reliable, that the school is violating applicable laws, regulations, special arrangements, agreements, or limitations. To take an emergency action, the Department official must determine that:

- The school is misusing federal funds.
- Immediate action is necessary to stop this misuse.
- The potential loss outweighs the importance of using established procedures for limitation, suspension, and termination.

The school is notified by registered mail (or other expeditious means) of the emergency action and the reasons for it. The action becomes effective on the date the notice is mailed.

An emergency action suspends the school's participation in all FSA programs and prohibits the school from disbursing FSA program funds or certifying FFEL applications. The action may not last more than 30 days unless a limitation, suspension, or termination proceeding is initiated during that period. In that case, the emergency action is extended until the proceeding, including any appeal, is concluded. The school is given an opportunity to show cause that the action is unwarranted.

Fine

The Department may fine a school up to \$27,500 for each statutory or regulatory violation. In determining the amount of the fine, the Department considers the gravity of the offense, the nature of the violation, and the school's size. The school is notified by certified mail of the fine action, the amount of the fine, and the basis for the action. A school has 20 days from the date of mailing to submit a written request for a hearing or to submit written material indicating why the fine should not be imposed.

Limitation

Under a limitation, which lasts for at least 12 months, the Department imposes specific conditions or restrictions upon a school and its administration of the FSA programs. As a result, the school is allowed to continue participating in those programs. If the school fails to abide by the limitation's conditions, a termination proceeding may be initiated.

Suspension

A suspension removes a school from participation in the FSA programs for a period not to exceed 60 days (unless a limitation or termination proceeding has been initiated or the Department and the school agree to an extension). A suspension action is used when a school can be expected to correct an FSA program violation in a short time.

Corrective action

As part of any fine, limitation, or suspension proceeding, the Department may require a school to take corrective action. This may include making payments to eligible students from its own funds or repaying illegally used funds to the Department. In addition, the Department may offset any funds to be repaid against any benefits or claims due the school.

Termination

A termination ends a school's participation in the FSA programs. A school that has violated the law or regulations governing the FSA programs, its PPA, or any other agreement made under FSA regulations and was terminated from participating in the FSA programs generally may not apply to be reinstated for at least 18 months.

Possibility of reinstatement

A school requesting reinstatement in the FSA programs must submit a fully completed E-App to the Department and demonstrate that it meets the standards in 34 CFR Part 668. As part of the reinstatement process, the school must show that it has corrected the violation(s) on which its termination was based, including repaying all funds (to the Department or to the eligible recipients) that were improperly received, disbursed, caused to be disbursed, or withheld. The Department may approve the request, deny the request, or approve the request subject to limitations (such as granting the school provisional certification). If the Department approves the reinstatement request, the school will receive a new ECAR and enter into a new PPA.

Notification requirement

34 CFR 600.40

...

(d) Except as otherwise provided in this part, if an institution ceases to satisfy any of the requirements for eligibility under this part—

- (1) It must notify the Secretary within 30 days of the date that it ceases to satisfy that requirement; and
- (2) It becomes ineligible to continue to participate in any HEA program as of the date it ceases to satisfy any of the requirements.

Effect on student eligibility for interest subsidies

A student enrolled at a school that loses eligibility or discontinues participation in the Direct Loan program can continue to receive interest subsidies if the student enrolls and remains enrolled at an eligible school.

CLOSEOUT PROCEDURES (WHEN FSA PARTICIPATION ENDS)

A school may stop participating in the FSA programs voluntarily or may be required to leave involuntarily, as described below. In either situation, it must follow the closeout procedures specified in the FSA regulations.

Involuntary withdrawal from FSA participation

A school's participation ends in the following circumstances:

- the school closes or stops providing instruction for a reason other than normal vacation periods or as a result of a natural disaster that directly affects the school or its students (see details on next page);
- the school loses its accreditation (see details on next page);
- the school loses its state licensure;
- the school loses its eligibility (see details on next page);
- the school's PPA expires;
- the school's participation is terminated under Subpart G;
- the school's provisional certification is revoked by the Department;
- the school's cohort default rate exceeds allowable limits; or
- the school files a petition for bankruptcy or the school, its owner, or its CEO is responsible for a crime involving FSA funds.

Closeout procedures when participation ends

In general, a school that ceases to be eligible must notify its School Participation Division within 30 days of its loss of eligibility to participate in the FSA programs.

The school must also comply with the following minimum requirements:

- Within 45 days of the effective ending date of participation, submit to the Department all financial reports, performance reports, and other reports, as well as a dated letter of engagement for an audit by an independent certified public accountant of all FSA program funds received. The completed audit report must be submitted to the Department within 45 days after the date of the letter of engagement.
- Report to the Department on the arrangements for retaining and storing (for the remainder of the appropriate retention period described in *Chapter 7*) all records concerning the school's management of the appropriate FSA programs.
- Tell the Department how the school will provide for collecting any outstanding FSA loans held by the school.
- Refund students' unearned FSA student assistance. (See *Volume 5, Chapter 2.*)

End of FSA participation

School closes or stops providing instruction

If the school closes its main campus or stops providing instruction on its main campus, its loss of eligibility includes all its locations and programs.

If a school ceases to provide educational instruction in all FSA-eligible programs, the school should make arrangements for its students to complete their academic programs. If the school chooses to enter into a formal teach-out arrangement, it should contact its school participation division for guidance.

School loses eligibility

A school loses its eligibility to participate in the FSA programs when it no longer meets the requirements of 34 CFR Part 600, certain requirements of Part 668, or when the Department terminates the school under Subpart G of the General Provisions.

Voluntary withdrawal from FSA participation

For many reasons a school may voluntarily withdraw from participating in one or all of the FSA programs. For instance, a school might wish to withdraw from the Perkins Loan Program to work on lowering high student loan cohort default rates. To withdraw from one or all of the FSA programs, the school must notify the Department via the electronic application. The school participation division has more information on these requirements and procedures.

A school that withdrew voluntarily (for instance, to lower its default rate) can request to participate again without the waiting period required for a school that was terminated from the program involuntarily or withdrew voluntarily while under a show cause or suspension order.

Withdrawing from the FSA programs while under a termination order or other sanction—or to avoid being placed under them—is not considered a voluntary withdrawal.

School loses primary accreditation

When a school loses its institution-wide accreditation, the Department generally may not certify or recertify that school to participate in any FSA program for two years after the school has had its accreditation withdrawn, revoked, or otherwise terminated for cause or after a school has voluntarily withdrawn under a show cause or suspension order. If a school wishes to be reinstated, it must submit a fully completed E-App to the Department.

The Department will not recertify a school that has lost its institution-wide accreditation in the previous two years unless the original accrediting agency rescinds its decision to terminate the school's accreditation. In addition, if a school voluntarily withdrew from accreditation during the last two years under a show cause or suspension order, the Department will not recertify the school unless the original order is rescinded by the accrediting agency. Finally, a school may not be recertified on the basis of accreditation granted by a different accrediting agency during the two-year period.

There are two exceptions to the two-year rule:

1. If the Department determines that loss of institution-wide accreditation was due to the school's religious mission or affiliation, the school can remain certified for up to 18 months while it obtains alternative accreditation.
2. If a school's institution-wide accrediting agency loses its Department recognition, the school has up to 18 months to obtain new accreditation.

Note that it is possible for accreditation to be withdrawn from one of the programs at a school without affecting the accreditation (and eligibility) of other programs at the school.

Definition of commitment

A commitment under the Pell and TEACH grant programs occurs when a student is enrolled and attending the school and has submitted a valid Student Aid Report to the school or when a school has received a valid institutional student information report.

A commitment under the Campus-Based Programs occurs when a student is enrolled and attending the school and has received a notice from the school of the amount that he or she can expect to receive and how and when that amount will be paid.
34 CFR 668.26(e)(1)

In addition, a school that closes must refund to the federal government or, following written instructions from the Department, otherwise distribute any unexpended FSA funds it has received (minus its administrative cost allowance, if applicable).

Unpaid commitments and loss of program eligibility

If a school's participation ends during a payment period or if a program loses its eligibility, but the school continues to provide education in the formerly eligible program until the end of the payment or enrollment period, the school may use FSA funds it possesses to

- satisfy unpaid Pell Grant or Campus-Based Program commitments made to students for that payment period or for previously completed payment periods before the school's participation ended.
- use the FSA funds in its possession to satisfy unpaid Direct Loan commitments made to students for that period of enrollment before participation ended by delivering subsequent Direct Loan disbursements to the students or by crediting them to their accounts (if the first disbursement already was delivered or credited to the students' accounts before the school's participation ended).

Note that the school may request additional funds from ED to meet these commitments.

Teach-out plan

34 CFR 668.14(b)(31)

Federal Register October 29, 2009

Also see:

Teach-out plan definition

34 CFR 600.2

Eligibility of additional locations for teach-out purposes

34 CFR 600.32(d)

Teach-out plan

A school must submit a teach-out plan to its accrediting agency if

- ED initiates an emergency action or initiates the limitation, suspension, or termination of the school's participation in any FSA program;
- the school's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation;
- the school's state licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program;
- the school intends to close a location that provides 100% of at least one program; or
- the school otherwise intends to cease operations.

Closure of a branch or location

A separate closeout audit is not required if a school closes an additional location or a branch campus because the next due compliance audit for the school must report on the use of FSA program funds at the closed location. However, the school must notify the Department of the additional location or branch closure. See *Chapter 5* for information on reporting information to the Department.

Loss of eligibility or withdrawal from the Direct Loan Program

If a school is notified that it has lost its eligibility to participate in the Direct Loan Program and the school does not intend to appeal the decision, it must immediately inform all current and prospective students of its loss of eligibility. The school must also explain that it can no longer originate Direct Loans for students or parents. If the school appeals its loss of eligibility within the required timeframe, the school may continue originating Direct Loans during the appeal process. Once a final decision on the appeal is made, the school must take the actions described in the Department's final appeal determination letter.

If a school plans to withdraw from participation in the Direct Loan Program, it must notify the Department of its decision in writing. Once the effective date of withdrawal has been established, the school is prohibited from disbursing loan funds to the student. However, if your school made a first disbursement to the student before it lost eligibility, it may still be able to make a subsequent disbursement to that student. See the conditions in 34 CFR 668.26(d).

Recovery of loan discharges when branch/location closes

If an additional location or branch of an institution closes and borrowers who attended the school obtain loan discharges by reason of the closure of the location or branch (or improper ATB or loan certifications), the Department will pursue recovery against the larger institution, its affiliates, and its principals.

20 USC 1087(c)(1)

